

Amendment No. 1 to SB0937

Kelsey
Signature of Sponsor

AMEND Senate Bill No. 937*

House Bill No. 987

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 30-4-103, is amended by deleting the section in its entirety and substituting instead the following:

Whenever a decedent leaves a small estate, it may be administered in the following manner:

(1)

(A) After the expiration of forty-five (45) days from the date of decedent's death, provided no petition for the appointment of a personal representative of the decedent has been filed in that period of time and decedent's estate is a small estate within the meaning of this chapter, one (1) or more of decedent's competent, adult legatees or devisees or personal representatives named in the decedent's will, if a will was left, or heirs or next of kin, if no will was left, or in either a testate or intestate estate, any creditor proving that creditor's debt on oath before the court, shall file with the clerk of the court an affidavit which shall set forth the following facts:

(i) Whether or not decedent left a will, and if so, the original shall be presented to the court for examination by the clerk. The original will has not been proven and therefore shall not be recorded. A copy of the original will

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shall be filed to support the affidavit. The original will shall be deposited with the court for safekeeping;

(ii) A list of unpaid debts left by decedent and the name and address of each creditor and the amount due that creditor;

(iii) An itemized description and the value of all of decedent's property, the names and addresses of all persons known to have possession of any of decedent's property, and a schedule of all insurance on decedent's life payable to the decedent's estate;

(iv) The name, age, address and relationship, if any, of each devisee, legatee or heir entitled to receive any of decedent's property; and

(v) Whether or not the affiant elects to give notice to creditors in the manner required for regular administration, this election being authorized in the affiant's discretion. If the election is made, all the provisions of §§ 30-2-306 — 30-2-321 shall apply.

(B) The form of the affidavit required by this section shall disclose that the affiant evidences by signature that, subject to the penalty for perjury, the affidavit is not false or misleading and that the affiant is mindful of all duties imposed upon the affiant by this chapter. No clerk or

assistant shall be liable as a result of services rendered to the affiant in good faith in completing the affidavit based upon information furnished by the affiant.

(C) Upon the motion of one (1) or more of the decedent's competent, adult legatees or devisees if a will was left, or the decedent's heirs or next of kin if no will was left, or upon its own motion, the court may, in its discretion for good cause shown, reduce the forty-five day period required by subdivision (1)(A).

(D) A competent adult who is not a legatee or devisee or personal representative named in the decedent's will, or an heir or next of kin of the deceased, may be appointed as the affiant for a small estate by the court, if all competent adult legatees or devisees or personal representatives named in the decedent's will, if a will was left, or heirs or next of kin, if no will was left, consent in writing to the appointment of the competent adult as the affiant; provided, that any person who is appointed as an affiant pursuant to these provisions shall comply with all other provisions of this section, including the bond provisions contained in subdivision (5). The consent shall not be required of any personal representative who is named in the decedent's will and who has renounced the appointment, in order for the court to appoint an affiant for a small estate.

(2) The court shall receive and file the original affidavit as a part of the court's permanent records, shall assign it a number and shall index it as other estates are indexed. The clerk shall deliver to the affiant as many certified copies of the affidavit as are requested, onto which are affixed a clerk's stamp and seal certifying that the affidavit has been filed in the office of the probate court. An

affidavit may be amended to the extent that the aggregate amount does not exceed the statutory limitation.

(3) The clerk shall charge and receive such fees for processing a small estate as authorized and provided in §§ 8-21-401 and 32-1-112

(4) The affiant shall make bond payable to the state for the benefit of those entitled with two (2) or more sufficient sureties or one (1) corporate surety. The amount of the bond shall equal the value of the decedent's estate to be administered under this chapter. However, bond shall not be required of the affiant if § 30-1-201 would not require such from a personal representative.

(5) The affiant and the sureties on the affiant's bond may obtain discharge from liability under the bond in either of two (2) ways:

(A) The court may enter an order discharging the affiant and the sureties on the affiant's bond after the affiant files:

(i) Either the tax receipt issued pursuant to § 67-8-420, or the certificate issued pursuant to § 67-8-409; and

(ii) An affidavit that each debt of the decedent is paid.

(B) Instead of filing as provided in subdivision (A), the affiant and the sureties on the affiant's bond may wait until the first anniversary of the filing of the affidavit when the court shall automatically discharge them from liability.

SECTION 2. This act shall take effect July 1, 2013, the public welfare requiring it, and shall apply to small estate affidavits filed on or after such date.